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SUPREME COURT OF THE UNITED STATES

October Term, 1982
No.

ROBERT J. KONDRAT
Petitioner

vs.

CITY OF WILLOUGHBY HILLS
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF OF PETITIONER FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. An ordinance of the city of Willoughby Hills, Ohio makes it unlawful to permit or maintain premises which reduce property values. Is there a denial of equal protection of the laws when the ordinance is not enforced uniformly?

2. Is there a denial of due process of law when the assignment of a case is made by a prejudiced judicial officer?

3. Is due process of law denied when Petitioner must represent himself because competent legal counsel cannot be obtained?

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OPINIONS BELOW

The Supreme Court of Ohio in Case No. 82-1415 on November 17, 1982, dismissed Petitioner's appeal on the basis that no constitutional question existed.

On August 30, 1982, the Eleventh District Court of Appeals of Ohio, in Case No. CA 9-069, affirmed the decision of Lake County Common Pleas Court of January 27, 1982 in Case No. 80-CIV-1263, which denied Petitioner's Summary Judgment and granted Respondent's Summary Judgment.

JURISDICTIONAL STATEMENT

A Petition for a Writ of Certiorari is sought of the judgment or decree of the Supreme Court of Ohio entered November 17, 1982. The statutory provision confered on this court to review the judgment or decree in question by Writ of Certiorari, is the supremacy clause of the U.S. Constitution which establishes that federal law shall prevail over state and local laws where state or local laws interfers with federal law.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provision involved is the Fourteenth Amendment to the United States Constitution which provides that no person shall be deprived of life, liberty or property without due process of law, nor denied equal protection of the laws.

STATEMENT OF THE CASE

A codified ordinance exists in the city of Willoughby Hills, Ohio governing exterior property nuisances. This ordinance is to protect the residents

against property devaluation. The enforcement of the ordinance by the city is carried out on a discriminatory basis with strict enforcement in some areas and no enforcement in others. The Petitioner had called upon the city numerous times to complain of the lack of enforcement in Petitioner's neighborhood. As a result of the discriminatory enforcement of this ordinance by the city, the Petitioner's property value was decreased over thirty percent by the taxing district. Petitioner sought damages against the city for the loss suffered.

Petitioner filed his complaint in the Lake County, Ohio Common Pleas Court. The court assignment judge that placed the case had once conspired to have Petitioner secretly indicted on fabricated criminal activity resulting from Petitioner's exercise of the First Amendment because of the city's discriminatory practice. Evidence showing the property devaluation was presented the court. The court in the first instance rendered a decision against Petitioner. Appeal was made to the state appellate

court citing a denial of due process and equal protection of the laws because of the prejudiced assignment judge. The appellate court rendered a decision affirming the first court's decision. Petitioner appealed to the Supreme Court of Ohio citing a denial of due process of law, and equal protection of the laws; and pleading that Petitioner was no attorney and asking that the court address itself to the facts. The Ohio Supreme Court ruled that no constitutional question existed.

ARGUMENT

QUESTION NO. 1. A city ordinance when not enforced uniformly does deny equal protection of the laws. In Yick Wo v. Hopkins, 118 U.S. 356; 6 S.Ct. 1064; 30 L. Ed. 220, the court ruled that any ordinance, however fair and impartial it may appear on the surface, if it be administered "with an evil eye and an unequal hand", is a denial of equal protection of the laws, and a violation of the Fourteenth Amendment. The court further ruled that the provisions of the Fourteenth Amendment are not confined to the protection of citizens.

QUESTION NO. 2. The assignment of this case in the court of first instance was made by a judicial officer who had once conspired to have the Petitioner secretly indicted on fabricated criminal activity stemming from Petitioner's exercise of the First Amendment. The conspiracy was subsquently exposed and the judicial officer was sued for his part. The judicial officer was rescued by the immunity doctrine. Petitioner argues that the stigma of Petitioner's litigation against the judicial officer could not be erased, and that in the capacity as assignment judge, the judicial officer could prejudice the case by assigning it to a judge having thoughts and views sympathetic with those of the assignment judge. Under such circumstances impartially is destroyed. Remedies existed whereby the assignment judge could have, and should have removed himself completely from the case. The involvement of the assignment judge, regardless of how small it may have appeared to be, nevertheless cast its shadow. In Tumey v. Ohio, 273 U.S. 510; 47 S.Ct. 437; 71 L.Ed. 749, the court ruled that

due process of law was deprived the defendant by subjecting his liberty or property to the judgment of a court, the judge of which has a direct, personal, substantial pecuniary interest in reaching a conclusion against him in his case. When denied the right to an impartial judge it violates the Fourteenth Amendment. In the instant case, Petitioner argues that the assignment judge had a direct, personal interest in seeing that a conclusion against the Petitioner was reached.

QUESTION NO. 3. In our country the right to and aid of counsel is guaranteed. In Powell v. Alabama, 287 U.S. 45; 53 S.Ct. 55; L.Ed. 158, the court ruled that the ordinary layman, even the intelligent and educated layman, is not skilled in the science of law, and needs the advice and direction of competent counsel. A denial of counsel is a denial of due process. In Gideon v. Wainwright, 327 U.S. 335; 83 S.Ct. 792; 9 L.Ed. 2d 799, the court ruled that an indigent must be provided counsel in a noncapital case, and that a provision of the Bill of Rights which is "fundamental and

essential to a fair trial" is made obligatory upon the states by the Fourteenth Amendment. The Petitioner in this case is no indigent, but can afford counsel and tried to obtain counsel. But competent counsel could not be had for fear that any representation in such litigation could imperil counsels' career. As expressed by one attorney, "I would be dead in Lake County". Confronted with this atmosphere, Petitioner had to represent himself. Petitioner tried his best, but could not compete on the same level as those schooled in the law. Petitioner argues that when the events and circumstances are such so as to preclude the right to, and aid of counsel, and the layman must represent himself against those who are skilled in the law, then due process of law is denied.

CONCLUSION

The case is not complex. Petitioner suffered a loss in property value because the city would not enforce its ordinance. The city had been notified repeatedly of the violation. When Petitioner's complaints went unheard, the Petitioner exercised

his right to petition the government for a redress of grievances. As retribution for the petitioning, the city officials conspired to fabricate criminal activity against Petitioner. The conspiracy was exposed and Petitioner sought justice in the courts. Petitioner tried to obtain competent counsel. But because of the sensitivity of the conspiracy issue, and due to the city and county officials involved, counsel either refused or feared the undertaking of such litigation. Consequently, the Petitioner was forced to represent himself. Petitioner is no attorney, is not schooled in the law, nor does he know court procedures, legal terminology or tactics of the profession, or how to properly phrase briefs, pleadings, etc. The courts have known this and have taken advantage of Petitioner's weakness by rendering decisions on all types of technicalities. Instead of looking at the evidence, applying common sense, and rendering a decision based on the facts, and based on Petitioner's level of understanding, the lower courts have discriminated to deny justice to the layman simply for the sake of convenience

to themselves and a profession. Is this the kind of justice that the layman can expect in our judicial system? Is this the kind of justice that the framers of our Constitution intended?

Respectfully Submitted,

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